

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1072

Introduced by Assembly Member Nakanishi

February 20, 2003

An act to add Chapter 11 (commencing with Section 12200) to Division 5 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1072, as amended, Nakanishi. Vehicles: commercial driver's licenses: third-party testers.

(1) Existing law prohibits a person from operating a commercial motor vehicle, as defined, unless the person has in his or her immediate possession a valid commercial driver's license of the appropriate class and an endorsement issued by the Department of Motor Vehicles to permit the operation of the vehicle, except as specified.

Existing law prohibits the issuance of a commercial driver's license until the applicant for the license has passed a written and driving test for the operation of a commercial motor vehicle, as specified.

Existing law requires the test to be conducted by, or under the direction of, the department, but authorizes the department to allow a third-party tester to administer the driving test part of the examination if certain conditions are met.

This bill would establish procedures for certification by the department of third-party testers and would prohibit a person from administering the specified test until he or she has been certified under these provisions. Because a violation of this prohibition would be a

crime, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 11 (commencing with Section 12200)
2 is added to *Division 5 of the Vehicle Code*, to read:

3
4 CHAPTER 11. THIRD-PARTY TESTERS FOR COMMERCIAL DRIVER'S
5 LICENSES

6 12200. For the purposes of this chapter, the following terms
7 have the following meanings, unless the context clearly requires
8 otherwise:

9 (a) The "administration" is the Federal Highway
10 Administration.

11 (b) The "bureau" is the Bureau for Private Postsecondary and
12 Vocational Education.

13 (c) A "certified third-party tester" is a person who has been
14 issued a certificate under this chapter.

15 (d) "Commercial driver's license" has the meaning defined in
16 subdivision (a) of Section 15210.

17 (e) "Federal regulations" include the regulations of the
18 administration, federal motor carrier safety regulations, and any
19 other applicable federal regulations.

20 (f) The "skills test" is the driving test authorized to be
21 administered by a third-party tester under subdivision (c) of
22 Section 15250.

23 (g) The "Administrative Procedures Act" is Chapter 5
24 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code.

26 (h) "Conviction" of a crime includes, but is not limited to, a
27 plea of guilty, no contest, or nolo contendere, or a finding of guilt

1 *by a trier of fact, regardless of whether a judgment of guilt was*
2 *entered or sentence was imposed.*

3 12202. (a) The department shall promulgate regulations for
4 the implementation of the third-party tester certification program
5 established under this chapter.

6 (b) ~~A~~ An employee of the department or of any public agency
7 may not be employed as a third-party tester

8 (c) A person may not administer a skills test until he or she has
9 been certified under this chapter.

10 12204. (a) An applicant for third-party tester certification
11 shall provide any information deemed necessary by the
12 department, including, but not limited to, all of the following:

13 (1) The full name, business address, and ~~phone~~ telephone
14 number of the applicant.

15 (2) An abstract substantiating the applicant's qualification for
16 third-party tester certification.

17 (3) The class of driver's license for which third-party tester
18 certification is being sought.

19 (4) The address of each location where the applicant intends to
20 conduct the skills tests, including, but not limited to, a description
21 of the off-road training facilities to be utilized, as well as a map and
22 written description of the test route that will be used for the on-road
23 portion of the testing.

24 (b) In addition to any requirements imposed by the department,
25 the applicant shall comply with the approval process administered
26 by the bureau.

27 12206. A certified third-party tester shall do all of the
28 following:

29 (a) Participate in any local, state, and national training courses,
30 workshops, and seminars deemed appropriate by the department.

31 (b) Conduct skills tests in accordance with the requirements
32 imposed by the department and by federal regulations.

33 (c) Facilitate annual on-site inspections by the department.

34 (d) Facilitate random examinations, inspections, and audits by
35 the department and the administration, without advance notice by
36 those entities.

37 (e) Maintain records of skills tests administered for the
38 previous two years, including, but not limited to, the following
39 information for each examinee:

40 (1) Full name and address.

1 (2) Social security account number, to the extent authorized
2 under federal law.

3 (3) The license number and state or origin for any license issued
4 prior to enrollment.

5 (4) The date of any skills test taken.

6 (5) A test score sheet for any skills test taken.

7 (6) A record of fees paid and refunds issued.

8 (7) The motor vehicle description, gross vehicle weight, and
9 license number of a motor vehicle used to administer the skills test.

10 (8) A copy of the contract for testing or training of the
11 examinee.

12 12208. The department shall issue third-party tester
13 certification to an applicant upon determining that the applicant
14 has complied with this chapter.

15 12210. Certified third-party testers shall do all of the
16 following:

17 (a) Notify the department of any change in the third-party
18 tester's qualification status.

19 (b) Surrender the certificate if the certificate is revoked by the
20 department for cause, or if the third-party tester becomes
21 permanently inactive.

22 12212. The third-party tester certificate is not transferable.

23 12214. The third-party tester certificate is valid for five years
24 and may be reissued upon application for additional five-year
25 periods. The applicant ~~for renewal~~ shall submit the application *for*
26 *renewal* not less than 180 days before the expiration date of the
27 certificate.

28 12216. The department shall train all third-party testers,
29 including, but not limited to, periodic refresher training. The
30 department shall charge a fee determined by it to be sufficient to
31 cover its costs for providing the required training.

32 12218. A copy of the third-party tester certificate shall be
33 prominently displayed at all testing facility locations.

34 12220. *For the purposes of this chapter, the department may*
35 *do any of the following:*

36 (a) *Conduct an investigation the department deems necessary.*

37 (b) *Conduct an audit and require a certified third-party tester*
38 *to submit to the department or the department's designee, at*
39 *intervals established by the department, an audit by a certified*
40 *public accountant or other person designated by the department.*

1 (c) Make an onsite inspection during regular business hours at
2 locations the department deems appropriate to determine
3 compliance by a certified third-party tester with this chapter. If an
4 inspection is conducted at a place located outside this state, the
5 department may charge a fee for that service to the certified
6 third-party tester.

7 (d) Reject a certified third-party tester's determination
8 regarding a driver's license applicant and administer a driver's
9 examination if the department has reason to question the driver's
10 license applicant's ability to exercise ordinary and reasonable
11 control in the operation of a motor vehicle.

12 (e) Promulgate any rules and regulations deemed by the
13 department to be necessary or useful to the implementation of this
14 chapter.

15 12222. (a) A person who applies for a certificate under this
16 chapter shall submit with the application a bond in a form to be
17 approved by the department, in an amount of at least twenty-five
18 thousand dollars (\$25,000), as established by the department.

19 (b) The bond shall be executed by a surety company authorized
20 to transact business in this state, with the applicant as principal
21 obligor on the bond and the state as obligee. The bond shall
22 include the conditions that the applicant will faithfully comply
23 with all of the provisions of law and that the bond is noncancellable
24 for the period of time for which the certificate is issued to the
25 applicant. The liability of the surety company terminates on the
26 department's termination of a certified third-party tester's
27 certificate to perform driver's license functions.

28 (c) The bond shall inure to the benefit of any person who suffers
29 loss because of any of the following:

30 (1) Insolvency or discontinuance of the certified third-party
31 tester's business.

32 (2) Failure of the certified third-party tester to comply with the
33 duties imposed under this chapter.

34 (d) The aggregate liability of a surety company for any breach
35 of the conditions of a bond required under this section may not
36 exceed the amount of the bond.

37 12224. (a) An applicant for, each partner of a partnership,
38 and each officer, director, agent, or stockholder owning 20 percent
39 or more of a corporation, seeking a third-party tester certificate
40 under this chapter shall provide a full set of fingerprints to enable

1 the department to conduct a criminal background investigation on
2 those persons. The criminal background investigation is not
3 required if the applicant is currently certified or licensed under
4 another provision of law of this state to perform the functions
5 authorized under this chapter and the applicant and each partner,
6 officer, director, agent, or stockholder owning 20 percent or more
7 of the corporation have submitted to the same type of criminal
8 background investigation as required under this section during the
9 past five years.

10 (b) The department shall deny an application for a third-party
11 tester certificate if any of the following applies:

12 (1) The application contains a false statement or
13 misrepresentation.

14 (2) A person named in the application meets any of the
15 following conditions:

16 (A) Has been convicted of a felony in any state, territory, or
17 possession of the United States or any foreign country, regardless
18 of whether civil rights have been restored.

19 (B) Has been convicted of a misdemeanor involving dishonesty,
20 false statement, perjury, or moral turpitude.

21 (c) The first phase of the criminal background investigation
22 shall be a criminal history record check. Upon notification that the
23 applicant has not been convicted of a violation that would prohibit
24 the applicant from obtaining a certificate, the department may
25 approve an application for provisional certification pending
26 completion of the criminal background investigation if the
27 applicant meets all other requirements of this chapter. The
28 department may revoke a provisional certificate for a violation of
29 this chapter. A provisional certificate is valid unless revoked by the
30 department or until the applicant receives approval or denial of the
31 application for certification.

32 (d) Within 20 days after completion of the criminal background
33 investigation, the department shall approve or deny the
34 application for certification. If the application is denied, the
35 department shall advise the applicant in writing of the denial and
36 the grounds for denial. The department or its employees are not
37 liable for any costs incurred by an applicant seeking certification
38 under this chapter.

1 (e) An applicant whose application is denied under this section
2 may petition the department in writing for a hearing pursuant to
3 the Administrative Procedures Act.

4 (f) If the certified third-party tester adds a partner, officer,
5 director, agent, or a stockholder owning more than 20 percent of
6 the corporation who was not included in the criminal background
7 investigation on a prior application, the certified third-party tester
8 shall notify the department within 30 days after the change.

9 (g) At the time of notification under subdivision (f), the certified
10 third-party tester shall submit to the department an application
11 and, if applicable, a full set of fingerprints for the purpose of a
12 criminal background investigation. On completion of the
13 investigation, if the individual added or changed by the certified
14 third-party tester is found to be ineligible under subdivision (b),
15 the department shall advise the certified third-party tester and the
16 individual, in writing, of the grounds for the action and that the
17 certificate will be revoked unless the individual is removed from the
18 position.

19 12226. (a) The department shall deny an application for a
20 certified third-party tester certificate for any of the following
21 reasons:

22 (1) The applicant is not eligible for certification as a
23 third-party tester under this chapter.

24 (2) The application is not made in good faith.

25 (3) The application contains a material misrepresentation or
26 misstatement.

27 (4) The applicant has not met the requirements of this chapter.

28 (b) The department shall notify the applicant of the denial
29 within the time and in the manner specified in the Administrative
30 Procedures Act.

31 (c) An applicant who is aggrieved under this section by the
32 denial of an application may make a written request to the
33 department for a hearing on the application denial within the time
34 and in the manner specified in the Administrative Procedures Act.

35 (d) The final decision of the department denying the
36 application may be appealed within the time and in the manner
37 provided by the Administrative Procedures Act.

38 12228. The department may suspend or revoke the certificate
39 of a certified third-party tester granted under this chapter for any
40 of the following reasons:

1 (a) *Making a material misrepresentation or misstatement in the*
2 *application for certification.*

3 (b) *Violation of a law of this state.*

4 (c) *Violation of a rule adopted by the department.*

5 (d) *Failure to keep and maintain records required by this*
6 *chapter.*

7 (e) *Allowing an unauthorized or uncertified person to engage*
8 *in any business under this chapter.*

9 (f) *Failure to maintain the bond required by Section 12222.*

10 (g) *Including a person in the application for certification who*
11 *has been convicted of a felony in any state, territory, or possession*
12 *of the United States, or any foreign country, regardless of whether*
13 *civil rights have been restored.*

14 (h) *Including a person in the application for certification who*
15 *has been convicted of a misdemeanor involving dishonesty, false*
16 *statement, perjury, or moral turpitude.*

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.